

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6432 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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HARISH DYEING & PRINTING WORKS

Versus

UNION OF INDIA

Appearance:

MR AMAR P DAVE for Petitioners.

MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 13/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, the petitioners have challenged the order Assistant Commissioner of Central Excise, Division-1, Surat, imposing the penalty of Rs. 7,50,000/= on the petitioner under Rule 96ZQ(5)(ii) of the Central Excise Rules.

2. The challenge is on the ground that the respondent No.2 has misconstrued the scope of his power under the aforesaid Rules and has imposed the penalty without considering that the power vested in him has to be exercised before deciding to impose the penalty and the quantum of penalty.

3. We have heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondent No.1.

4. When this petition has reached final hearing, learned counsel for the parties state that Special Civil Application No. 164 of 2002 and some cognate matters have already been heard and decided by this Court on 7th March 2002. While making the Rule absolute in the said petition/s, this Court directed the Assessing Officer, i.e., the authority who has passed the Order-in-Original to consider the matters insofar as the penalty was concerned in light of the observations made in the said judgment. This Court held, that although the provisions of Clause (ii) of Sub-Rule (5) of Rule 96ZQ of the Central Excise Rules were not required to be declared as ultra vires, the authority was required to be directed to read the Rule in a reasonable manner, that is to say, the penalty stipulated therein is only the maximum amount which could be levied and the assessing authority has the discretion to levy lesser amount depending upon the facts and circumstances of each case. This Court also referred to and followed the decision of the Apex Court in Hindustan Steel Ltd., Vs. The State of Orissa, reported in AIR 1970 S.C. Page 253, that penalty cannot be imposed merely on account of failure to comply with the procedural provision and this Court referred to the principles laid down by the Apex Court in Paragraph 7 of the said decision.

5. We have heard the learned counsel for the petitioners as well as the learned Senior Standing Counsel for the Central Government. There is no dispute about the fact that the controversy raised in the present petition is covered by the principles laid down in the said judgment dated 7th March 2002 of this Court in

Special Civil Application No. 164 of 2002 and other cognate matters.

6. We accordingly allow this petition and quash and set aside the impugned order-in-original, dated 30th November 2000 at Annexure "A" to the petition insofar as the order imposes penalty under Rule 96ZQ(5)(ii), and the matter is remanded to the authorities. The remaining portions of the impugned order are not interfered with, for the simple reason that the petitioners have preferred appeal for challenging the other parts of the orders levying duty and interest. The authorities will be at liberty to pass appropriate orders of penalty in accordance with law in light of the observations made by this Court in the aforesaid judgment dated 7th March 2002 in Special Civil Application No. 164 of 2002 and cognate petitions. It is again clarified that this judgment is only confined to the question of penalty levied upon the petitioners.

7. In the result, the impugned order dated 30th November 2000 is quashed and set aside and the matter is remanded to the authorities. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]